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**TEXAS RISK REDUCTION PROGRAM**  
**RESTRICTIVE COVENANT FOR ENVIRONMENTAL CONDITIONS**

STATE OF TEXAS

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COUNTY OF BRAZORIA

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This Restrictive Covenant for Environmental Conditions is filed to provide information concerning certain environmental conditions and use limitations pursuant to the Texas Commission on Environmental Quality (TCEQ) Texas Risk Reduction Program (TRRP) Rule found at 30 Texas Administrative Code (TAC), Chapter 350, and affects the real property (Property) described on Exhibit **A** [METES AND BOUNDS OF THE INDIVIDUAL LOT, ENTIRE PROPERTY] and shown on Exhibit **B** [MAP THAT SHOWS ALL IC COMPONENTS FOR THE INDIVIDUAL LOT AS IDENTIFIED BELOW], which is attached hereto and incorporated herein by reference.

This Restrictive Covenant for Environmental Conditions is required for the following reasons:

The Property currently meets TRRP standards for commercial/industrial/agricultural use. Based on the reports, the COCs pose no significant present or future risk to humans or the environment based on commercial/industrial/agricultural land use. The Property should not be used for residential purposes as the Property may not be protective for residential use. If any person desires in the future to use the Property for residential purposes, the TCEQ and EPA must be notified at least sixty (60) days in advance of such residential use. TCEQ and EPA must approve the proposed residential use in writing and additional response actions may be necessary before the Property may be used for residential purposes. Persons contemplating a change in land use for the Property are encouraged to review the definitions for commercial/industrial/agricultural and residential land use contained in TRRP as the definition of residential land use is broad.

Portions of the soil and groundwater underlying the Property contain certain identified COCs, causing those portions of the Property to be considered an Affected Property, as that term is defined in the TRRP. The portion considered to be the Affected Property is described on Exhibit **C** [METES AND BOUNDS OF THE AFFECTED PROPERTY AREA REQUIRING ICs WITHIN THE INDIVIDUAL LOT] and shown on Exhibit **B**, which is attached hereto and incorporated herein by reference.

This Restrictive Covenant for Environmental Conditions is also required for the following reasons:

The Affected Property is subject to the TRRP requirements for properties containing concentrations of COCs in soil and groundwater that exceed the TCEQ-approved critical protective concentration levels (PCLs), is subject to the requirements in 30 TAC §350.33(e)(2) to prevent human exposure to soils with COCs above PCLs and is subject to the requirements in 30 TAC §350.33(f)(1) to prevent human exposure to groundwater with COCs above PCLs and other groundwater resources are protected. Remedial action on the Affected Property included constructing a soil cap control on the Affected Property to address COCs above PCLs in the subsurface soil and included constructing other remedial components, which are essential to maintain the effectiveness of the remedy and to address COCs above PCLs in the soil and groundwater.

The attached Exhibit **D** [O&M PLAN], attached hereto and incorporated herein by reference, describes each component of the institutional controls on the Affected Property. Exhibit **D** also provides the reason these institutional control components must remain in place and describes the required maintenance required for each institutional control component of the institutional controls. This program must be implemented unless and until TCEQ and EPA approves any modification.

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- 1.) Soil Cap: the surface soils on the Affected Property contain concentrations of one or more COCs in excess of the protective concentration levels, as identified in TRRP rules, and those surface soils have been consolidated into a soil cap, as shown on Exhibit B of the Affected Property. A multi-layered soil cap has been placed on the Affected Property over the surface soils containing COCs in excess of protective concentration levels. The soil cap consists of a large soil mound with sloped sides and stabilized by grass, covering the entire surface of the soil cap. The soil cap and subsurface soils on the Affected Property must remain undisturbed and the soil in the Affected Property area should not be excavated or displaced outside of the current cap location inside the Affected Property Area in order to prevent human exposure to soils that contain COCs in excess of protective concentration levels. If any person desires in the future to use or develop buildings at the Affected Property, the TCEQ and EPA must be notified at least sixty (60) days in advance of such proposed use and must approve such proposed use in writing prior to any activity on the soil cap that is inconsistent with this restrictive covenant. Additionally, TCEQ and EPA will determine whether such buildings may be designed to prevent exposure to subsurface soil and whether additional response actions or other appropriate measures may be necessary during or prior to building development. The attached Exhibit D, attached hereto and incorporated herein by reference, describes the required maintenance required for the soil cap. The maintenance requirements described in Exhibit D must be implemented unless and until TCEQ approves any modification.
  - 2.) Indoor Vapor Intrusion: the soil cap on the Affected Property poses no significant present risk to human health or the environment based on industrial/commercial land use. However, because of the nature of the COCs under the soil caps (greater than 1 foot below the surface), if buildings are developed at the Affected Property, the Affected Property may not be protective against indoor vapor intrusion from the underlying soil. Therefore, buildings should be designed to preclude indoor vapor intrusion, or the Affected Property should be re-evaluated for potential indoor vapor intrusion prior to building development. If any person desires in the future to develop buildings at the Affected Property, the TCEQ and EPA must be notified at least sixty (60) days in advance of such proposed use and must approve any use in writing. Additionally, TCEQ and EPA will determine whether such buildings may be designed to preclude indoor vapor intrusion and whether additional response actions or other appropriate measures may be necessary during or prior to building development.
  - 3.) Groundwater: the Affected Property contains a groundwater plume, which is defined as an area of groundwater containing concentrations of chemicals of concern exceeding protective concentration levels for the site. Remedial action on the Affected Property established that the chemicals of concern in the groundwater are managed such that human exposure is prevented and that other groundwater resources are protected. The attached Exhibit E, which is attached hereto and incorporated herein by reference, provides the location and extent of the groundwater plume management zone and also describes the maintenance and monitoring required. This maintenance and monitoring must be implemented unless TCEQ and EPA approves some modification of those requirements. Exposure to groundwater within the groundwater plume for any purpose is not allowable until such time when all of the chemicals of concern no longer exceed their respective protective concentration levels as confirmed in writing by TCEQ and EPA.
  - 4.) Monitoring Wells:  
  
in order to monitor the effectiveness of the remedial action as it relates to groundwater on the Affected Property, groundwater monitoring wells were constructed on the Affected Property. to continue to be effective, to monitor the location and COC level within the groundwater Each

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monitoring well includes above-ground and underground components. Below the surface, a small-diameter boring encased in PVC piping is inserted down through the soil substrata to the shallow groundwater. Each monitoring well is bordered by surface concrete and four concrete posts, surrounding the monitoring well's above-ground cylindrical tube, which creates an access point to the shallow groundwater so that the groundwater can be tested for COCs. Any removal or modification of any monitoring well is prohibited without prior written approval from TCEQ and EPA. The monitoring wells must be maintained as described in Exhibit D.

- 5.) Fencing/Signage: remedial action on the Property included constructing a metal, chain-link fence [Correct Description] around the perimeter of the Affected. The fence is approximately [INSERT] feet high with barbed wire affixed at the top of the chain-link fence and the fence was constructed to restrict access to the Affected Property in order to prevent human exposure to soils and groundwater with COCs above PCLs. Warning signs are affixed on the exterior of the fence to deter unauthorized entry into the fenced area. Any removal or modification of the fencing or signage is prohibited without prior written approval from TCEQ and EPA. The fencing and signage institutional control components must be maintained as described in Exhibit D.

The following is a list of COCs that exceed PCLs in the soil and groundwater within the Affected Property: [INSERT COCSs].

As of the date of this Restrictive Covenant for Environmental Conditions, the record owner of fee title to the Property is [INSERT] with a mailing address of [INSERT].

In consideration of the Response Actions by the TCEQ, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner has agreed to place the following restrictions on the Property in favor of the TCEQ and the State of Texas to wit:

1. The Property shall not be used for any purposes other than commercial/industrial uses, as defined in 30 Texas Administrative Code, Chapter 350, Section 350.4(a)(13) without prior approval from TCEQ and EPA.
2. The construction or development of buildings at the Affected Property is prohibited without prior written approval from TCEQ and EPA.
3. The soil cap and subsurface soils on the Affected Property must remain undisturbed. Excavation, disturbance or displacement of the soil cap on the Affected Property area is prohibited without prior, written TCEQ and EPA approval in order to prevent human exposure to soils that contain COCs in excess of protective concentration levels. The soil cap must be maintained and monitored as described in Exhibit D.
4. Use of and exposure to groundwater on the Affected Property for any purpose is prohibited until such time when the TCEQ determines that all the COCs no longer exceed their respective PCLs. In addition, accessing the groundwater or installing water wells of any kind on the Affected Property is prohibited without prior written TCEQ or EPA approval and/or until TCEQ and EPA otherwise determine there to be no risk of concentrations of COCs exceeding PCLs.
5. The removal or modification of the monitoring wells on the Affected Property is prohibited without prior written approval from TCEQ and EPA. The monitoring wells on the Affected Property shall not be disturbed or modified in any way so that the remedy remains protective of human health and the environment. Any activities that may damage the monitoring wells on the

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Affected Property installed by the TCEQ, EPA, or their representatives, or any activities that may interfere with the maintenance, operation, or monitoring of such wells, are prohibited without prior written approval from the TCEQ and EPA.

6. The removal or modification of the fencing and signage on the Affected Property is prohibited without prior approval from TCEQ and EPA. The fencing and signage must be regularly inspected, maintained and repaired as necessary to ensure that the fence continues to restrict unauthorized access to the Property and the signage identifies the restricted access to the Property until such time when TCEQ and EPA determine that access to the Affected Property no longer needs to be restricted.
7. TCEQ, EPA and their contractors shall have the continued right of entry to access the Affected Property at all reasonable times to oversee any sampling or other environmental activities the TCEQ and EPA consider appropriate for the continued effectiveness of the remedial action, as well as to inspect and otherwise determine compliance with the Restrictive Covenant for Environmental Conditions.
8. The removal or modification of any one of the other remedial features on the Affected Property, including the monitoring wells, fencing and signage is prohibited without prior approval from TCEQ and EPA.
9. All institutional control components as identified in this Restrictive Covenant for Environmental Conditions must be maintained and monitored as described in Exhibit D.
10. Removal or modification of this Restrictive Covenant for Environmental Conditions is prohibited without prior approval of TCEQ and EPA.
11. These restrictions shall be a covenant running with the land.

For additional information, contact:

TCEQ  
Central Records  
12100 Park 35 Circle, Building E  
Austin, Texas 78753

Mail: TCEQ - MC 199  
P O Box 13087  
Austin, Texas 78711-3087

EPA Program No.: XD980748453

This Restrictive Covenant for Environmental Conditions may be rendered of no further force or effect only by a release executed by the TCEQ or its successor agencies and filed in the same Real Property Records as those in which this Restrictive Covenant for Environmental Conditions is filed.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**[INSERT] [OWNER]**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Title:\_\_\_\_\_

Accepted as Third Party Beneficiary this\_\_\_\_\_ day of \_\_\_\_\_, 2012.

**Texas Commission on Environmental Quality**

Signature:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

BEFORE ME, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, personally appeared

\_\_\_\_\_, \_\_\_\_\_  
, \_\_\_\_\_  
(printed name) (title)

of [INSERT], known to me to be the person whose name is subscribed to the foregoing instrument, and they acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(SEAL)

\_\_\_\_\_  
Signature, Notary Public in and for the State of \_\_\_\_\_,  
Typed or Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, personally appeared

\_\_\_\_\_, \_\_\_\_\_,  
(printed name) (title)

of the Texas Commission on Environmental Quality, known to me to be the person whose name is subscribed to the foregoing instrument, and they acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(SEAL)

\_\_\_\_\_  
Signature, Notary Public in and for the State of \_\_\_\_\_,  
Typed or Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_